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IN THIS

**Supreme Court of the United States**

October Term, 1941.

No. 178

James F. Byrnes, A. G. Postmaster,

Howard M. Smith, Attorney General and an executor  
to the Alien Property Custodian, Respondent.

On Writ of Certiorari to the United States Court of Appeals  
for the District of Columbia Circuit.

**QUESTION TO WHICH THE SOLICITOR  
GENERAL IS TO ANSWER FROM THIS  
SUMMARY DOCKET**

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November 2, 1941



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1951.

—  
No. 178  
—

UEBERSEE FINANZ-KORPORATION, A. G., *Petitioner*,

v.

J. HOWARD MCGRATH, Attorney General and as successor  
to the Alien Property Custodian, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals  
for the District of Columbia Circuit

—  
**OPPOSITION TO MOTION BY THE SOLICITOR  
GENERAL TO TRANSFER FROM THE  
SUMMARY DOCKET**

The issues in this case can be very briefly stated. While the record is a lengthy one all the relevant questions can be decided by reference to the findings of fact which are short and simple. It will be unnecessary to refer to any testimony whatever in the course of argument.

It is true, as the Solicitor General says, that the principal issue depends on the legal incidents under German

law of a usufructuary interest held by an enemy citizen in the stock of petitioner, a neutral corporation. Those legal incidents, however, are clearly spelled out in the findings of the Court. Petitioner contends the usufruct amounts only to an interest of the enemy citizen in a portion of the dividends, secured by keeping the stock in escrow. The Government's opposing contention as to the legal effect of the usufruct as defined by the Court can be equally brief.

It is true that the Government may differ with petitioner as to the interpretation of and inferences to be drawn from some findings. But the findings on which such differences may exist can be set out in a page and the differences between the Government and petitioner are pure questions of law as to the legal effect of these findings.

The further question whether the Government has seized more property than it is entitled to keep, assuming that the enemy interest is sufficiently important to justify any confiscation of the property of this neutral, is equally simple. Petitioner will contend that where stock is pledged or put in escrow or used otherwise as security for the obligation of a stockholder to pay eventual dividends to another party, the interest of the pledgor, or however he may be called, and that of the beneficiary of pledge, escrow or similar agreement are entirely separable. They are not fractional interests in the stock in the sense that a stockholder might be held to have a fractional interest in the assets of an enemy tainted corporation (a question raised by the petition in *Kaufman v. Societe Internationale, etc., and J. Howard McGrath*, No. 172).

Therefore, we assert the Custodian was at the most entitled to confiscate only the separable interest of the enemy in the American assets and not the entire interest of the neutral corporation. This presents a simple question of law under the findings of fact of the Court defining the legal incidents of the usufruct.

In the present posture of the case on the summary docket, petitioner's opening brief will approximate only twenty-five pages.

Petitioner opposes this motion because granting it would be an invitation to the Government to go into the record, as it did in the court below, and present questions of fact which, while within the power of the Court to review, are not a proper ground for a writ of certiorari. Such a presentation would require petitioner in the interest of caution to answer these irrelevant issues, and thus add to the burden of the Court.

Respectfully submitted,

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